

# **Report to the District Development Control Committee**



**Epping Forest  
District Council**

**Date of meeting: 26 April 2005**

**Subject: Possible Revocation of Planning Permission – 237,  
Fencepiece Road, Chigwell**

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Committee Secretary: Simon Hill**

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## **Recommendation:**

**To take no further action.**

Report:

## **Background**

1. At its meeting on 5 January 2005, Area Plans Subcommittee A considered a report on a planning application for a two storey side extension at no.239, Fencepiece Road, Chigwell. The submission claimed that the side extension would remain 500mm from the side boundary (instead of the normal 1metre) but argued in justification that their neighbour at no.237 had been granted permission for the same in January 2004, there being a total of only 1m. between the two properties.
2. The file for no.237 appeared to indicate that the Council had been persuaded in that case that the applicant owned the full 1m between the properties and permission had been granted on that basis. The submissions of the applicant for no.239, therefore, appeared to throw doubt upon the veracity of the statements about ownership and about the basis upon which permission had been given and consequently the committee asked officers to investigate the possibility of revoking the permission for no.237.
3. Planning permission for the two storey extension at no.239 was refused on the basis that the extension would be closer to the boundary than 1metre and result in a cramped appearance and a terracing effect. On the face of it, the committee were of the view that the extension at no.237 should have been refused for the same reason, if the distance to the boundary in reality was only 500mm as the applicant for no.239 was stating.
4. Since revocation carries the likelihood of compensation, it falls to this committee to determine any action.

## **The Facts of the Case**

5. Nos. 237 and 239, Fencepiece Road are two detached houses on the west side of Fencepiece Road, south of its junction with Shrublands Close. Fencepiece Road in this area has a mixed character of detached, semi-detached and terraced houses. Both the properties have attached garages and there is a distance of 1 metre between the two garage walls.
6. In 1990, planning permission was granted for a two storey extension to no.237 in place of the existing garage but built on its footprint. The approved plan indicates 700mm to the side boundary. This permission was not taken up and the extension was not constructed.

7. In December 2003, an application was received for a first floor extension over the existing garage at no.237. The small scale, block plan accompanying the application indicated correctly that there was 1m. between the two garages, but appeared to indicate that this was entirely owned by the applicant so that the existing garage and the consequent first floor extension would be 1m. from the plot boundary. The case officer, on this occasion an outside contractor, correctly identified that this detail differed from the 1990 submission and contacted the agent by telephone. The file note made at the time suggests that the agent confirmed that the land between the two garages was in his client's ownership, though the agent subsequently claims that he stated only that his client owned land between the two garages, which is not quite the same. The case officer, however, also queried the matter with the applicant when making his site visit and, again, a file note indicates that he confirmed what the agent had stated, but, again, this could be taken to mean different things.
8. Officers have recently visited the site and taken measurements. In fact, the position of the boundary is not obvious on the ground due to overgrown boundary planting and forecourt paving of no.239, but there is an old fencepost concreted into the ground which can safely be taken to be a long-standing boundary marker. This, in fact, marks a boundary that is not equi-distant between the two garages but equates to 700mm from the side wall of the garage.
9. This would suggest that the approval granted in 1990 was based upon correct information and that the information submitted by the applicant at no.239 was not quite correct, in that his extension would have projected to within 300mm of the boundary line and not 500mm as he was claiming.

### **Revocation Orders**

10. A Revocation Order is an order served by a planning authority that removes or revokes a permission earlier granted. It has to be confirmed by the Secretary of State before coming into effect, but if an objection is received (which will be so in this case), the Secretary of State will hold a Public Inquiry to determine whether the order should be confirmed, in the same manner as a planning appeal.
11. Compensation is payable for any loss or damage attributable to the Revocation Order and consequently it is an authority not used lightly and only in exceptional circumstances. The Secretary of State's attitude is that Revocation Orders should only be used rarely, and where a decision is judged to be 'grossly wrong' and damaging 'to the wider public interest'.

### **Issues**

12. The issues to be determined in this case, then, are: should the Council pursue revocation in these circumstances; would the Council be successful in sustaining a Revocation Order; and at what cost.
13. 'Should the Council use these powers':  
The decision taken to grant permission to the 2003 application was based upon an understanding that there was 1m to the plot boundary. It transpires that there is 700mm to the boundary, but does this discrepancy of 300mm render the decision 'grossly wrong'? After all, the applicant and his agent have stated that there was no intention to deceive but rather a misunderstanding of the statements made, but most telling is that permission was granted in 1990 on the basis that 700mm to the boundary was adequate. This discrepancy does not result in a feature that would impact upon the wider public awareness. Officers advise that these circumstances do not justify the use of revocation order powers.
14. 'Would the Council be able to sustain a Revocation Order'

The Secretary of State would consider only the planning merits of the proposed scheme. Matters to be taken into account would include the adopted policy DBE10 which states in the accompanying text that a gap to the boundary of at least 1m will normally be required for side extensions to detached properties. However, regard will also be paid to the character of the street where all houses differ and some houses already extend to their boundaries; that adjacent properties are not adversely affected by the proposal and that in 1990 the Council considered 700mm to the boundary to be acceptable. Officers conclude that a Revocation Order is most unlikely to be confirmed.

### **Compensation Costs.**

15. The precise compensation costs are difficult to estimate. If successful with the Order, the compensation payable would be the difference in value between the house with and without the extension. This would be offset by the fact that the Council would grant permission for a smaller extension, though the costs of this would be included in the compensation. Compensation would also include damages for the delay caused to the applicant in being able to construct an extension to his home.

If the Council were not successful with sustaining the Order, the Council could be required to pay the applicant's costs of the Inquiry, and compensation for the delays caused by the process.

Officers advise that the potential benefit of securing a first floor extension just 300mm further from the site boundary than approved would not justify the levels of compensation likely to be payable.

### **Conclusions**

16. The position on site is not as feared by the Area Plans subcommittee. In fact, the advice being given by the occupier of no.239 was incorrect and the gap forming part of no.237's plot is 700mm and not 500mm. The dimensions of the extension approved in 2003 is the same as that approved in 1990. It would have been unreasonable, therefore, to have come to a decision different from that in 1990 and hence the 2003 decision is not 'grossly wrong' and does not justify the use of revocation powers.
17. Furthermore, to pursue such action, whether successful or not, would result in the Council being liable for significant compensation for which there is no budget. The benefit to the wider public interest is very slight, if existing at all, and the compensation or costs likely to be payable cannot be justified by this small gain.
18. It is therefore concluded that no further action should be taken in this matter.